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10 BEL AIR GRAND HOLDINGS, LLC,
11 THE JRB-TAT BAILEY FAMILY TRUST
12 and JOHN R. BAILEY, P.C.

13
14 UNITED STATES DISTRICT COURT

15 DISTRICT OF NEVADA

16 BEL AIR GRAND HOLDINGS, LLC, a
17 Nevada limited liability company; The JRB-
18 TAT BAILEY FAMILY TRUST, a Nevada
19 trust; and JOHN R. BAILEY, P.C., a Nevada
professional corporation,

) Case No.: 2:10-cv-00063-JCM-LRL

20 Plaintiffs,

) **STIPULATION AND PROTECTIVE**

21 vs.

) **ORDER REGARDING**

22 FEDERAL DEPOSIT INSURANCE
23 CORPORATION, as Receiver for
24 COMMUNITY BANK OF NEVADA,

) **CONFIDENTIAL AND HIGHLY**

25 Defendant.

) **CONFIDENTIAL INFORMATION**

) **[PROPOSED]**

26 Plaintiffs Bel Air Grand Holdings, LLC, the JRB-TAT Bailey Family Trust, and John R.
27 Bailey, P.C. (collectively "Plaintiffs"), and Defendant Federal Deposit Insurance Corporation
28 ("Defendant"), by and through counsel, hereby stipulate and agree pursuant to Fed. R. Civ. P.
29 26(c) and 29 that the use and handling of "Confidential Information" and "Highly Confidential
Information" as herein obtained or used in connection with the above-captioned proceeding (the
"Case") shall be governed by the provisions set forth below.

1 Plaintiffs and Defendant are each a “Party” and are collectively referred to as the
 2 “Parties.” The Party producing Confidential Information or Highly Confidential Information, as
 3 described infra, is hereinafter referred to as the “Designating Party,” the Party receiving the
 4 produced Confidential Information or Highly Confidential Information is hereinafter referred to
 5 as the “Receiving Party.”

6 1. **Confidential Information.** In providing or revealing discovery materials, the
 7 Designating Party may designate appropriate material as “CONFIDENTIAL – Subject to
 8 Protective Order” under the terms of this Stipulated Protective Order (hereinafter “Order”).
 9 Confidential information is information which has not been made public and which constitutes
 10 trade secrets, proprietary data, marketing information, or highly personal information which the
 11 Designating Party maintains in confidence and believes in good faith that unprotected disclosure
 12 might result in injury to the privacy rights or contractual rights of the individuals or entities that
 13 the Designating Party represents or might result in economic competitive injury to the
 14 Designating Party.

15 By designating a document, thing, material, testimony or other information derived
 16 therefrom as “confidential,” under the terms of this order, the party making the designation is
 17 certifying to the court that there is a good faith basis both in law and in fact for the designation
 18 within the meaning of Fed. R. Civ. P. 26(g).

19 2. **Highly Confidential Information and Use of Highly Confidential**
 20 **Information.** In providing or revealing discovery materials, the Designating Party may
 21 designate appropriate material as “HIGHLY CONFIDENTIAL –Subject to Protective Order –
 22 ATTORNEYS’ EYES ONLY.” Highly Confidential Information comprises otherwise
 23 Confidential Information and which constitutes: (1) the Designating Party’s private financial
 24 information relevant to and produced in response to punitive damage discovery requests; (2) the
 25 Designating Party’s proprietary or trade secret information wherein the Designating Party and

1 Receiving Party are direct competitors such that the disclosure to Receiving Party would put the
2 Designating Party at a severe competitive disadvantage; or (3) any other category of particularly
3 confidential information agreed upon by the respective counsel for the Designating Party and
4 Receiving Party in writing or otherwise ordered by the Court pursuant to Fed. R. Civ. P. 26(c).

5 In the event discovery materials are designated as "HIGHLY CONFIDENTIAL Subject
6 to Protective Order – ATTORNEYS' EYES ONLY," the Designating Party's intent is to limit
7 the review of, and the communication of the specific contents contained on or in, said materials
8 to counsel for the Receiving Party only – the party or parties represented by counsel for the
9 Receiving Party are precluded from access to, review of, and/or communication from counsel for the
10 party or parties regarding the specific contents of, the discovery materials so marked. Absent a Court
11 order, the items designated as "HIGHLY CONFIDENTIAL – Subject to Protective Order –
12 ATTORNEYS' EYES ONLY" may be reviewed by the Receiving Party's attorneys, but not by the
13 Receiving Party.

14 By designating a document, thing, material, testimony or other information derived
15 therefrom as "Highly Confidential," under the terms of this order, the party making the
16 designation is certifying to the court that there is a good faith basis both in law and in fact for the
17 designation within the meaning of Fed. R. Civ. P. 26(g).

18 **3. Designation of Confidential Information or Highly Confidential Information.**
19 If the Designating Party produces Confidential Information or Highly Confidential Information,
20 all copies of such documents or things or responses or portions thereof deemed to be confidential
21 shall be marked "CONFIDENTIAL – Subject to Protective Order" and treated as confidential or
22 shall be marked "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – Subject to
23 Protective Order" and treated as highly confidential as set forth in Paragraph 2.
24 Stamping the legend "CONFIDENTIAL – Subject to Protective Order" or "HIGHLY
25 CONFIDENTIAL – Subject to Protective Order – ATTORNEYS' EYES ONLY" on the cover

1 of any multi – page document shall designate all pages of the document as confidential, or highly
2 confidential, as the case may be, unless otherwise indicated by the Designating Party.

3 4. **Use of Confidential Information or Highly Confidential Information.** All
4 Confidential Information or Highly Confidential Information designated or marked as provided
5 herein shall be used by the Parties solely for the purposes of prosecuting, defending, settling, or
6 enforcing and/or collecting any judgment entered in this action, and shall not be disclosed to
7 anyone other than as provided herein and shall be handled in the manner set forth herein until
8 such designation is removed by the Designating Party or by order of the presiding Court in this
9 matter, as well as any other court handling appeals therefrom (“Court”). Nothing herein shall
10 preclude the Producing Party from using its own Confidential Information or Highly
11 Confidential Information. The use of Highly Confidential Information shall be subject to the
12 provisions of Paragraph 2.

13 5. **Use of Confidential Information or Highly Confidential Information in**
14 **Depositions.** The Parties shall have the right to use Confidential Information or Highly
15 Confidential Information during depositions only in accordance with the terms of this Order,
16 including Paragraph 2 with respect to Highly Confidential Information. At any deposition
17 session, upon inquiry with regard to the content of a document marked CONFIDENTIAL
18 Subject to Protective Order” or “HIGHLY CONFIDENTIAL – Subject to Protective Order
19 ATTORNEYS’ EYES ONLY” or whenever counsel for the Designating Party deems that the
20 answer to the question may result in the disclosure of Confidential Information or Highly
21 Confidential Information, or whenever counsel for the Designating Party deems that the answer
22 to any question has resulted in the disclosure of Confidential Information or Highly Confidential
23 Information, the deposition (or portions thereof) may be designated by the Designating Party as
24 containing Confidential Information or Highly Confidential Information subject to the provisions
25 of this Order. Counsel for the Designating Party may direct that the question and answer be

1 transcribed separately from the remainder of the deposition and marked "CONFIDENTIAL –
 2 Subject to Protective Order" or "HIGHLY CONFIDENTIAL – Subject to Protective Order –
 3 ATTORNEYS' EYES ONLY." When such direction has been given, the testimony shall be
 4 disclosed only to those individuals specified herein, and the information contained therein shall
 5 be used only as specified herein. Counsel for the Designating Party may also request that all
 6 persons not qualified under this Order to have access to the Confidential Information or Highly
 7 Confidential Information leave the deposition room during the confidential portion of the
 8 deposition. Failure of such other persons to comply with a request to leave the deposition shall
 9 constitute substantial justification for counsel to advise the witness that the witness need not
 10 answer the question seeking the revelation of Confidential Information or Highly Confidential
 11 Information. Counsel must designate portions of a deposition transcript as confidential or highly
 12 confidential within thirty (30) days of receiving the transcript, or within 30 days of entry of this
 13 order, whichever is latest. Designations may be made by letter to counsel of record. Portions of
 14 deposition transcripts so designated shall be treated as Confidential Information or Highly
 15 Confidential Information by the parties as set forth herein. During the thirty (30) day period, the
 16 entire transcript shall be treated as confidential. If no confidential designations are made within
 17 the thirty (30) day period, the entire transcript shall be considered non – confidential.

18 6. **Disclosure of Confidential Information.** Confidential Information produced
 19 pursuant to this Order may be disclosed or made available only to the Court and to the persons
 20 designated below:

21 (a) Counsel for the Parties (the Parties' undersigned counsel of record,
 22 including attorneys associated with the such counsel's law firm and the paralegal,
 23 clerical, and secretarial staff employed by such counsel);

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(b) A party, or an officer, director, or employee of a party deemed necessary by counsel to aid in the prosecution, defense, settlement, or the enforcement and collection of any judgment which may be entered in this action;

(c) Outside experts or consultants (together with their clerical staff) retained by such counsel to assist in the prosecution, defense, settlement, or the enforcement and collection of any judgment which may be entered in this action;

(d) Court reporter(s) employed in this action;

(e) A witness at any deposition or other proceeding in this action; and

(f) Any other person as to whom the Parties to this Stipulation and Protective
in writing agree.

Prior to receiving any Confidential Information, each such person other than those persons designated in subsections (a) and (d) of this paragraph above, shall be provided with a copy of this Stipulation and Order and shall execute a nondisclosure agreement acknowledging the terms of this Stipulation and Order and agreeing to be bound thereby in the form of Attachment A. A copy of the acknowledgement executed by a person designated in subsections (c), (e) and (f) above shall be provided to the Designating Party five (5) business days prior to the disclosure. The Designating Party may object to the disclosure in writing prior to the date of intended disclosure. If the objection cannot be resolved, the objecting party will have ten (10) days from the initial date of the intended disclosure to move the Court for an order barring the individual from access to Confidential Information. No disclosure will be made to the challenged individual until the objection is resolved either consensually between the Parties or by the Court.

The Parties hereby stipulate and agree that the Magistrate Judge shall be the final determiner of issues pertaining to this section. The Court and any Court staff will not be required to sign any non – disclosure agreement prior to receiving any information classified as Confidential Information.

1 7. **Filing of Confidential Information With the Court.** Any Confidential
2 Information or Highly Confidential Information which is filed with the Court, including
3 transcripts of depositions or portions thereof, documents produced in discovery, information
4 obtained from inspection of premises or things, exhibits and all other documents which have
5 previous thereto been designated as containing Confidential Information or Highly Confidential
6 Information in any pleading or memorandum reproducing or paraphrasing or containing such
7 information, shall be filed and maintained in compliance with Fed. R. Civ. P. 5.2.

8 8. **Knowledge of Unauthorized Use or Possession.** The Receiving Party or their
9 counsel shall immediately notify the Designating Party in writing if such Receiving Party learns
10 of any unauthorized possession, knowledge, use or disclosure of any Confidential Information or
11 Highly Confidential Information. The Receiving Party shall promptly furnish the Designating
12 Party the full details of such possession, knowledge, use or disclosure. The Receiving Party shall
13 assist the Designating Party in preventing the recurrence of such unauthorized possession,
14 knowledge, use or disclosure and shall cooperate fully with the Designating Party in any
15 litigation against any person to protect the Confidential Information and the Highly Confidential
16 Information.

17 9. **Copies, Summaries or Abstracts.** No copies, summaries or abstracts of the
18 Confidential Information or Highly Confidential Information shall be made other than any such
19 limited materials reasonably needed by the Parties, their counselor their experts (subject to
20 Paragraph 6) for the sole purposes of use in the above-captioned Case. Any such copies,
21 summaries or abstracts shall be marked "Confidential" or "Highly Confidential" and shall be
22 considered Confidential Information or Highly Confidential subject to the terms and conditions
23 of this Order.

24 10. **Information Not Confidential.** The restrictions set forth in this Order shall not
25 be construed:

(a) To preclude any party or its attorneys of record from making use of information which was lawfully in their possession prior to the approval by the Court of this Order and/or production by the Designating Party; or

(b) To apply to information or other materials that have been or become part of the public domain by publication or otherwise and not due to any unauthorized act or omission on the part of the Receiving Party; or

(c) To apply to information or other materials that, under law, have been declared to be in the public domain.

9 For purpose of this Stipulation and Order “tax returns” cannot be declared as information
10 in the public domain, unless such returns have been made publicly available pursuant to state or
11 federal law or otherwise have voluntarily been made publicly available by such tax payer.

12 Nothing herein shall impose any restrictions on the use or disclosure by a party of
13 material obtained by such party independent of discovery in this action, whether or not such
14 material is also obtained through discovery in this action and designated Confidential
15 Information or Highly Confidential Information hereunder, or from disclosing its own
16 Confidential Material or Highly Confidential Information, as it deems appropriate.

17 **11. Challenges to Designations.** If, during the pendency of this litigation, counsel
18 for the Receiving Party: (1) disagrees with the designation of any information or materials
19 designated as Confidential Information or Highly Confidential Information; (2) or believes that it
20 is necessary or appropriate to disclose Confidential Information or Highly Confidential
21 Information to persons ‘other than those permitted by this Order; and/or (3) finds it necessary to
22 seek a Court determination on an expedited basis from the general notice and timing provisions
23 under this Agreement, the Receiving Party’s counsel may make an appropriate application to this
24 Court requesting that: (a) the specific documents, information, and/or deposition testimony be
25 excluded from the provisions of this Order; (b) the Confidential Information or Highly

1 Confidential Information be made available to specified other persons; and/or (c) the Court issue
2 an expedited determination. With the exception of a party seeking relief pursuant to subsection
3 (c) of this section, Counsel for the Designating Party shall be given ten (10) days notice to object
4 to the challenge made by the Receiving Party under this section. The party claiming
5 confidentiality shall have the initial burden of establishing confidentiality.

6 The Parties hereby stipulate and agree that the Magistrate Judge shall be the final
7 determiner of issues pertaining to this section.

8 **12. No Waiver of Challenges to Designations.** Neither party shall be obligated to
9 challenge the propriety of a “Confidential” or “Highly Confidential” designation, and a failure to
10 do so promptly shall not preclude a subsequent attack on the propriety of such designation.
11 Nothing herein shall constitute a waiver by the Receiving Party of its right to challenge a
12 changed designation or identified error in the designation of certain information as Confidential
13 Information or Highly Confidential Information.

14 **13. Use in Court.** In the event that any Confidential Information or Highly
15 Confidential Information is used in any Court proceeding in this action, it shall not lose its
16 confidential status through such use, and the Parties shall take all reasonable steps to maintain its
17 confidentiality during such use, including, without limitation, moving that the Court seal any
18 transcript with respect to such proceeding.

19 **14. No Waiver Regarding Confidential Nature of Information.** This Order is
20 entered solely for the purpose of facilitating the production of documents and information by the
21 Parties without involving the Court unnecessarily in the process. Nothing in this Order nor the
22 production of any information or document under the terms of this Order, nor any proceedings
23 pursuant to this Order, shall be deemed to have the effect of an admission or a waiver by the
24 Parties or of altering the confidentiality or the non-confidentiality of any such document or
25 information or altering any existing obligation of any Party or the absence thereof. Entry of this

1 Order does not preclude the Parties from seeking or opposing additional protection for particular
2 information, nor does consent to entry of this Order constitute an admission that any particular
3 proposed consultant is or is not an appropriate person to receive Confidential Information.

4 **15. No Waiver of Privilege.** This Order will not prejudice the right of a Party to
5 oppose production of any information on the ground of attorney-client privilege, work product
6 privilege or any other privilege or protection provided under applicable law.

7 **16. Return or Destruction of Information.** Within thirty days after entry of final
8 judgment including appeals, or of dismissal with prejudice in connection with this action, all
9 documents and things, including transcripts of depositions or of trial, together with all copies
10 thereof, which have been designated as Confidential Information or as Highly Confidential
11 Information, shall be returned to the Designating Party.

12 **17. Injunctive Relief Available.** Each Party to this Stipulation and Protective Order
13 acknowledges that monetary remedies are inadequate to protect Confidential Information and
14 Highly Confidential Information and that injunctive relief shall be appropriate to protect such
15 rights.

16 **18. Attorneys' Fees.** Should litigation arise concerning the designation of
17 Confidential Information or Highly Confidential Information, the terms and/or the conditions of
18 this Agreement, or in the breach of the same, in addition to any other relief or award available
19 under the Federal Rules of Civil Procedure or the local rules of the United States District Court,
20 District of Nevada, the prevailing Party shall be entitled to reasonable attorneys' fees and costs in
21 an amount awarded by the Court. With regard to the designation of Confidential Information or
22 Highly Confidential Information or challenge of such designation, fees and costs shall only be
23 awarded upon a finding by the Court that the designating party had no justifiable basis for the
24 designation.

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1 19. **Amendment.** This Agreement may be amended by the written agreement of
2 counsel for the Parties, which shall be submitted to for approval by the Court in this action.

3 20. **Order Survives Termination.** This Order shall survive the termination of this
4 action, and the Court shall retain jurisdiction to resolve any dispute concerning the use of
5 information disclosed hereunder.

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1 Prepared and submitted by:

2 BAILEY♦KENNEDY

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4 By: /s/ Craig A. Henderson

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11 SYLVESTER & POLEDNAK, LTD.

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13 By: /s/ Allyson R. Noto

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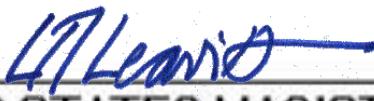
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23 **IT IS SO ORDERED.**

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UNITED STATES MAGISTRATE JUDGE
DATED: June 16, 2011

ATTACHMENT A

NON-DISCLOSURE AGREEMENT

3 1. I have read the STIPULATION AND PROTECTIVE ORDER REGARDING
4 CONFIDENTIAL AND HIGHLY CONFIDENTIAL INFORMATION (the “Confidentiality
5 Order”) attached hereto.

6 2. I agree that my signature below manifests that I understand and acknowledge the
7 terms and provisions of the Confidentiality Order, and that I agree to be bound by those terms
8 and provisions.

9 3. I declare under the penalty of perjury under the laws of the United States of
10 American that the foregoing is true and correct.

11 EXECUTED this _____ day of _____, 201____ in _____.